

Department of Energy

§ 1040.63

for All Handicapped Children Act of 1975, Pub. L. 94-142.

(3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity; and

(4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(f) *Handicap* means condition or characteristic that renders a person a handicapped person as defined in paragraph (c) of this section.

(g) *Historic properties* means those architecturally, historically or culturally significant properties listed in or eligible for listing in the National Register of Historic Places or such properties designated under a statute of the appropriate State or local governmental body.

(h) *Building alterations* means those changes to the existing conditions and equipment of a building which do not involve any structural changes, but which typically improve and upgrade a building, such as alterations to stairways, doors, toilets, elevators, and site improvements.

(i) *Structural changes* means those changes which alter the structure of a historic building including, but not limited to, its bearing walls and all types of post and beam systems in wood, steel, iron or concrete.

The definitions set forth in §1040.3 of this part, to the extent not inconsistent with this subpart, are made applicable to and incorporated into this subpart.

§ 1040.63 Discrimination prohibited.

(a) *General.* No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance from DOE.

(b) *Discriminatory actions prohibited.* (1) A recipient, in providing any aid, benefit, or service, may not directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified person the opportunity to participate in or benefit from the aid, benefit or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless the action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or services to beneficiaries of the recipient's program or activity;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement in the most integrated setting appropriate to the person's needs.

(3) Despite the existence of permissible separate or different aid, benefits, or services, a recipient may not deny a qualified handicapped person the opportunity to participate in aid, benefits, or services that are not separate or different.

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(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration that:

(i) Have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap;

(ii) Have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program or activity with respect to handicapped persons; or

(iii) Perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same state.

(5) In determining the site of a facility, an applicant for assistance or a recipient may not make selections that—

(i) Have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives Federal financial assistance from DOE; or

(ii) Have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) *Aid, benefits, or services limited by Federal law.* The exclusion of non-handicapped persons from aid, benefits, or services limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from aid, benefits, or services limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) Recipients shall take appropriate steps to ensure that communications with their applicants, employees and handicapped persons participating in federally assisted programs or activities or receiving aids, benefits or services, are available to persons with impaired vision and hearing.

(e) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

[45 FR 40515, June 13, 1980, as amended at 68 FR 51347, Aug. 26, 2003]

§ 1040.64 Effect of State or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this subpart is not obviated or alleviated by the existence of any State or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for non-handicapped persons.

(c) *Effect of other regulations.* All regulations, orders, or similar directions issued by any officer of DOE which impose requirements designed to prohibit discrimination against individuals on the grounds of race, color, national origin, sex, age or handicap under any program or activity to which this part applies, and which authorize the suspension, termination or refusal to grant or to continue Federal financial assistance for failure to comply with these requirements, are superseded to the extent that discrimination is prohibited by this part. Nothing in this part is to relieve any person of the obligation assumed or imposed under any superseded regulation, order, instruction, or similar direction prior to the effective date of this part. Nothing in this part is to supersede the effective date of this part. Nothing in this part is to supersede Executive Orders 10925, 11114, 11063, 11246, and regulations issued under these authorities, or supersede any other regulations or instructions which prohibit discrimination on the ground of race, color, national origin, sex, age, or handicap in